THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2004-0691, In the Matter of Wilfred F. Stalker and Cynthia Stalker, the court on July 19, 2005, issued the following order:

The petitioner, Wilfred Stalker, appeals an order of the trial court modifying the parties' divorce decree. He contends that the trial court erred in awarding increased child support retroactive to the date of the parties' divorce and in recalculating the amount of his child support obligation. We affirm in part, reverse in part and remand.

Trial courts have broad discretion to review and modify child support awards; we will set aside a modification award only if it clearly appears that the court's exercise of discretion was unsustainable. In the Matter of Breault & Breault, 149 N.H. 359, 361 (2003).

The parties were divorced in March 2003; at the time, they submitted a proposed final stipulation and waived a final hearing. In January 2004, the respondent, Cynthia Stalker, filed a petition to change court order; she requested that the court order the petitioner to continue to pay the full costs of the children's education, that he pay the amount of child support due under the child support guidelines, see RSA ch. 458-C, and that he pay the total amount of the children's unreimbursed medical and dental expenses.

After a hearing at which the petitioner did not appear, the trial court issued an order finding that the child support worksheet submitted at the time of the parties' divorce was inaccurate, that it did not contain a child support calculation, that the income of the parties was transposed and that the petitioner had advised the respondent at the time of the drafting of the proposed final stipulation that he thought his child support obligation should be approximately $500 per week. The trial court concluded that these findings constituted "significant and serious discrepancies," granted the petition to modify and recalculated child support from the date of the divorce decree.

The petitioner first contends that the trial court erred in awarding increased child support retroactive to the time of the parties' divorce decree. We agree. See RSA 458-C:7, II (2004) (any child support modification shall not be effective prior to date notice of petition for modification is given to obligor). The trial court cited the petitioner's misrepresentation to the respondent of his putative child support obligation at the time of the parties' original divorce as grounds for the retroactive modification. Absent a finding of fraud, however, this

misrepresentation does not support a modification that predates the petitioner's notification. See DeButts v. LaRoche, 142 N.H. 845, 847 (1998) (pro se litigants responsible for knowing content of court rules applicable to their actions).

We find no error, however, in the trial court's recalculation of the petitioner's child support obligation as of the date of the petition to modify. See In the Matter of Jerome & Jerome, 150 N.H. 626, 633 (2004) (child support order not retroactive when it modifies child support obligation in light of changed circumstances effective as of date of petition to modify). In this case, the trial court found that while the original worksheet indicated that the petitioner earned $6062 and the respondent earned $15,000 per month, the petitioner actually earned $15,000 per month and the respondent earned $1600 per month. The trial court could therefore properly have found that not only had the respondent's income decreased since the time of the original decree but that the original decree was based on substantially inaccurate figures. See In the Matter of Rohdenburg & Rohdenburg, 149 N.H. 276, 279 (2003) (trial courts must have all information relevant to determination of child support before them before exercising their discretion). Accordingly, we find no error in the trial court's decision to recalculate the petitioner's child support obligation.

The petitioner also asserts that the trial court erred in recalculating the amount of support due "by requiring [him] to pay the agreed upon private school tuition for the three children and then calculating a support obligation based on the child support guidelines." We find no error. While we do not hold private school payments should be deducted from child support guideline amounts, not only did petitioner's counsel represent at the hearing on the petition to modify that the petitioner "has no problem paying the tuition," but the trial court specifically credited him with the amount of those payments in calculating the amount of child support due.

Affirmed in part; reversed in part; and remanded.

NADEAU, DALIANIS and GALWAY, JJ., concurred.

Eileen Fox,
Clerk